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NEWSLETTER

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Indiana Supreme Court Decision Increases Protections for Patients Seeking Treatment at Non-Hospital Facilities

by Burton A. Padove, Padove Law

In a recent Indiana Supreme Court case, the Court held that non-hospital medical entities that serve as a health care providers may be vicariously liable for physicians whom they independently contract with unless they give meaningful notice to the patient, the patient has independent special knowledge of the arrangement between the non-hospital medical entity and its physicians, or the patient otherwise knows about these relationships. This decision helps prevent non-hospital medical facilities from evading liability in negligence cases involving the facility and independent contractor physicians.

The Facts of the Case

The plaintiff went to Marion Open MRI (the defendant) to get MRIs of his spine. Marion Open MRI is not a hospital, but an outpatient diagnostic imaging center that is not a qualified healthcare provider under the Indiana Medical Malpractice Act. Marion Open MRI independently contracted with a radiologist to read MRIs and sent the plaintiff's MRI images to the radiologist for interpretation. The radiologist was never physically present at the Marion Open MRI facility and instead interpreted the images from his home office. The radiologist's reports appeared on Marion Open MRI letterhead and had zero indication of his independent contractor status.

The plaintiff filed his complaint alleging medical malpractice, claiming that Marion Open MRI and the radiologist failed to diagnose and treat his spinal condition which has

now resulted in permanent injuries. Marion Open MRI argued that it was not liable for the radiologist's actions because the relevant law does not apply to non-hospital entities. In response, the plaintiff argued there was a dispute of material fact whether the radiologist was acting as an apparent agent for Marion Open MRI, even considering the fact that Marion Open MRI is not a hospital. When there is a genuine dispute of material fact, the case



must go to trial. The trial court ultimately decided not to go to trial and ruled in favor of Marion Open MRI. The Court of Appeals reversed the trial court decision, holding that "it is reasonable for a patient in a diagnostic imaging center to believe that the radiologists interpreting images for the center are employees or agents of the center, unless the center informs them of the contrary." The case was appealed to the Indiana Supreme Court.

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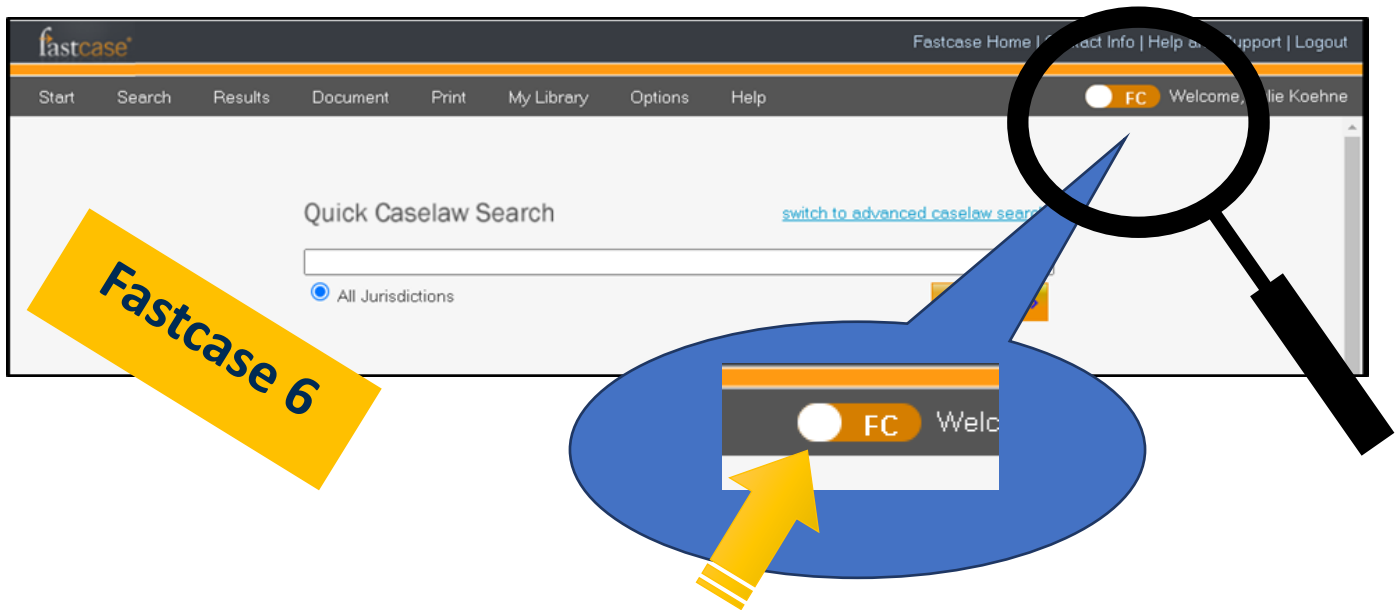
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TECH TIP

Fastcase versions, recent issues and remedy!

Fastcase currently has two versions, Fastcase 6 and Fastcase 7. As Fastcase makes updates, Fastcase 6 may become slower and less reliable, while Fastcase 7 remains stable.



When you access Fastcase from the Law Library website you are automatically connected to Fastcase 6. To switch to Fastcase 7, use the toggle switch in the top right hand corner.



Fastcase 7



To toggle back to fastcase 6, click on the account icon and select "Back to Fastcase 6" from the dropdown menu.

Fastcase boolean operators

Fastcase (2020) Introduction to Boolean Searching - Fastcase [PowerPoint Slides]

Operator	Example	Description
AND, &	libel AND damages	Results must contain both "libel" and "damages"
OR	premarital OR prenuptial	Results must contain either "premarital" or "prenuptial"
NOT	negligence NOT criminal	Results must contain "negligence" but not the word "criminal"
w/3, /3	custody /15 interrogation	Results must contain "custody" within 15 words of "interrogation."
, !	testif	Results must contain some variation of the stem "testif" such as testified, testify, testifying, etc.
?	mari?uana	Results must contain m-a-r-i-_u-a-n-a with any letter substituted for the question mark
" "	"estate tax"	Results must contain the exact phrase "estate tax"
()	(confront OR cross-examine)	Parentheses tells Fastcase to do the operations contained within it before doing things outside

Indiana Supreme Court's Decision

Marion Open MRI argued that because it is not a hospital, it cannot be held liable for the radiologist's alleged negligence under the apparent agency legal doctrine. In making its decision, the Court considered vicarious liability, which involves a court holding a party legally responsible for negligence of another, not because the party did anything wrong but rather because of the party's relationship with the wrongdoer. When there is no employer-employee or principal-agent relationship, a principal may still be vicarious liability for the negligence of another under the apparent agency legal doctrine. Apparent agency may be established when a third party reasonably believes there is a principal-agent relationship based on the principal's communications to the third party. Apparent agency concerns only whether a principal's communications induce a



third party to reasonably believe there is a principal-agent relationship. Under certain circumstances, if there's a finding of apparent agency, then a party can be said to be vicariously liable.

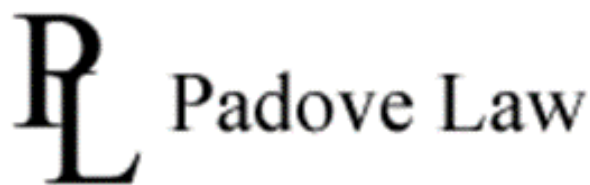
Indiana courts look at two factors when considering apparent agency: (1) the principal's manifestations, or communications, that an agency relationship exists and (2) the patient's resulting reliance. Here, the Court decided that

despite the fact that Marion Open MRI is not a hospital, patients increasingly rely on non-hospital medical entities, and hospitals and non-hospital medical entities can make representations that reasonably lead a patient to believe that the physicians providing them healthcare are the facility's employees or agents. Ultimately, the Court decided that apparent agency principles apply outside of the hospital context, preventing non-hospital medical entities from evading liability in negligence cases and allowing these entities to be held vicariously liable for the actions of physicians they independently contract with.

About the Author:

Burton Padove is a solo practitioner who has been an attorney for over 40 years.

He is licensed in Indiana and Illinois and focuses on representing individuals who need legal assistance in injury and family matters. He is the owner of the Indiana Injury and Family Law Blog which has one of the highest ratings for Indiana Blog Sites.



The Hamilton County Law Library would like to feature your law articles or legal blog posts. Submit your 1500 - 2000 word article to Reference@cms.hamilton-co.org.

Articles Accepted:

- ♦ Research papers/working papers
- ♦ Practice area articles
- ♦ Case analysis/notes
- ♦ Legislation-analysis/commentary

Medical Resources

Law Library subscribers have access to a variety of LLC Resources, including those listed below. If you have questions about these resources, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300.

Library Resources

AMA guides to the evaluation of disease and injury causation / RC963.4 .A9

Anatomy and physiology 101 for attorneys [in Ohio] / KFO539.P4 A63 2015

Damages in personal injury [in Ohio]. / KFO195.A25 D36 2014

Harney's medical malpractice / F2905.3 .H37

Health law / KF3821 .H4343 2015

Baldwin's Ohio Handbook Series Ohio Personal Injury Practice / KFO539.P4 I41

Medical liability in a nutshell / KF2905.3 .B68 2011

Personal injury litigation in Ohio. / KFO539.P4 P4

Personal injury valuation handbook. / KF1256.A8 P47

HeinOnline

American journal of medical jurisprudence

Medico-Legal Journal

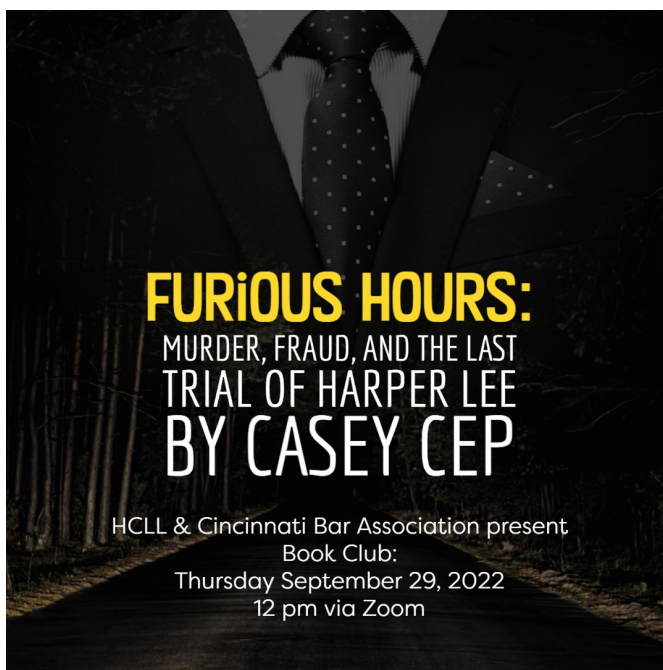
Medical Law Review

WestLaw Resources

Baldwin's Ohio Handbook Series Ohio Personal Injury Practice

Baldwin's Ohio Practice, Ohio Tort Law

Ohio Jurisprudence, Third Edition



Upcoming Events

- ◆ Closed for Labor Day— 09/05/2022
- ◆ CBA & HCLL Book Club Meeting –
09/29/2022 at 12:00 PM – 1:00 PM
- ◆ Closed for Columbus Day—10/10/2022
- ◆ CLE: Working on Your Gender Based Violence Case – 10/20/2022 at 12:00 PM –
1:30 PM
- ◆ CLE: Working on Your Gender Based Violence Case – 11/03/2022 at 12:00 PM –
1:30 PM
- ◆ Election Day Closed at 12:30— 11/08/2022
- ◆ CLE: Working on Your Gender Based Violence Case – 11/17/2022 at 12:00 PM –
1:30 PM

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive legal information databases from the Law Library, including

Lexis+, Westlaw, Wolters Kluwer VitalLaw™, Overdrive e-books, HeinOnline, and Loislaw treatises

Wireless network throughout the Law Library

Polycom videoconferencing

Eight meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

CLE seminars throughout the year on legal research and substantive topics

Subscribers' lounge, magazines, daily newspapers, and coffee

Bi-weekly news alerts by practice area

Discounted rates for photocopying

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and Wolters Kluwer VitalLaw™



CLE Opportunity:

We are very honored and excited to announce this new CLE opportunity. Please join us for a 3 part CLE starting on Thursday, October 20, 2022, 12-1:30 PM, as we partner with the YWCA. Danielle Firsich, Manager of Non-Residential Domestic Violence Services at YWCA Greater Cincinnati, will be teaching about gender based violence.

This program is applied for 1.5 hours of credit in Ohio for each session & 1.5 hour of general credit for EACH session in Kentucky. You can attend 1 or all 3 programs.

Training Learning Objectives, General Training I:

Thursday, October 20, 2022, 12-1:30

I. Dimensions of Gender-Based Violence, Power & Control, and Targeted Abuse

II. Trauma-Informed Practices with Survivors & Children

III. Family Justice Center Models and Comprehensive Victim Services

Domestic Violence Injury Patterns, Lethality, and Strangulation:

Thursday, November 3, 2022, 12-1:30 PM

- I. Identifying injury and behavioral patterns unique to survivors of gender-based violence.
- II. Assessing for high-risk and high-lethality patterns in offenders
- III. Strangulation as a special consideration in domestic violence incidents.

Working with Underserved Survivors, Immigrants & Interpreters

- I. Exploring the role of culture and intersectional identities when serving survivors of gender based violence.
- II. Identifying critical challenges and barriers for BIPOC, immigrant and LGBTQ+ survivors of gender-based violence.
- III. Working with survivors and interpreters utilizing trauma-informed practices.



Laptops Available

The Law Library has multiple computers available for subscriber use in our computer lab, but if you need a little more freedom, we also have laptops available for use in other spaces in the library. The laptops have Zoom capabilities, as well as research and word processing. To check out a laptop for in-library use, please see the reference staff and we'll get you set up!

Law Library Board Meeting

The Hamilton County Law Library Resources Board will next meet on Wednesday, October 12 at 12pm. Meetings of the Hamilton County Law Library Resources Board are open to the public. The meeting will be held in the Robert S. Kraft Boardroom in the Law Library.

Thank you!

As we head into a busy time of year, full of back to school happenings, holidays, upcoming subscriber renewals (for us!) and, of course, a looming CLE reporting deadline for many of you, we just want to pause and say thank you to all of our subscribers. We're always happy to provide you a calming oasis of quiet and coffee. We hope to ease the chaos a bit by helping you out with your legal research and providing you with those invaluable CLE credits. Thank you for being our subscribers! Let us know how we can help you out this time of year. Or any time!

Follow us on social media!

If you appreciate the content of our monthly newsletter, you should like us on [Facebook](#) and follow us on [Twitter](#) (@HCLawLib) and Instagram for even more updates on library happenings and info on relevant legal news. We also publish a [blog](#) and push those updates to our social media accounts, so if you follow us you'll never miss a post.





Did you know?

Did you know that you can get public library books at the Law Library? Thanks to a partnership with the Cincinnati and Hamilton County Public Library we receive new titles every month, including children's books and adult fiction and nonfiction materials. You're welcome to peruse the titles on site or take them home. You can either return them to us or to any branch of the Cincinnati Public Library when you're finished. We recognize that everyone needs a break occasionally and are happy to bring you a collection of materials that meet your diverse interests. Stop in for legal research and leave with some entertaining adult fiction or picture books for your family!

September 2022 Law Library Newsletter

INSIDE THIS MONTH

- Medical Liability
- Medical Malpractice Resources
- CLE Workshop Opportunity
- Upcoming Events

ADDRESS CORRECTION REQUESTED

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Cincinnati, OH 45202